

FILE NO. 5:19-CT-03361-M

Defendants.

**DEFENDANTS' RESPONSE TO ORDER
DATED SEPTEMBER 20, 2021 [D.E. 39]**

NOW COME Defendants James Henry Candelario, Jamie Emmanuel Holmes, and Curtis Murray (“Non-Waiving Defendants”), by and through undersigned counsel, Assistant Attorney General Alan D. McInnes, and hereby respond to the Court’s order dated September 20, 2021 [D.E. 39] as follows:

1. On December 2, 2020, Plaintiff, Stanley Earl Corbett, Jr., (“Plaintiff”), an inmate in the custody of DPS and its Division of Adult Correction, filed a complaint against waived Defendants and others. [D.E. 1]
2. On May 12, 2021, the Court completed its frivolity review and issued an order directing the Clerk to continue management of the case. [D.E. 17]
3. On the same date, the Court issued requests for waivers to defendants and transmitted those waivers electronically to DPS_EasternDistrict_US_Court@ncdps.gov, the e-mail address designated by DPS to receive waivers from this Court, as required by Standing Order 14-SO-02, thus making the waivers due on or before July 11, 2021.
4. On July 16, 2021, Special Deputy Attorney General James Trachtman filed waivers of service on behalf of Defendants Jay Hale, Daniel Hatley, Anthony Mizzelle, Kimberly

Fisher, Larry Grandy, and Tyrone Perkins, II (the “Waiving Defendants”) along with a motion to deem the waivers timely-filed. On August 2, 2021, the waivers of the Waiving Defendants were deemed timely filed [D.E. 24] making the answers of the Waiving Defendants due on August 23, 2021.

5. On July 16, 2021, Special Deputy Attorney General James Trachtman filed notices under seal with respect to Defendants Candelario, Holmes, Murray and Ayes. [D.E. 21]
6. On July 20, 2021, the Court issued summons with respect to Defendants Candelario, Holmes, Murray and Ayes. [D.E. 23]
7. On August 23, 2021, the undersigned filed a motion for an enlargement of the time to file an answer on behalf of the Waiving Defendants or otherwise respond to Plaintiff’s Complaint, up to and including September 22, 2021. [D.E. 28]
8. At that time the undersigned learned that Defendants Candelario, Holmes and Murray had been served conventionally, and that the time for filing the answers for those defendants had passed.
9. Before August 23, 2021, the undersigned had not filed a notice of appearance on behalf of any defendants since, as of August 23, 2021, the required procedure for investigation, recommendation and confirmation of representation—both those of the Waiving Defendants and the Non-Waiving Defendants--had not been finalized.
10. Under the Defense of State Employees Act (“DSEA”), codified at N.C.G.S. § 143-300.3 et seq., the State of North Carolina may provide a defense to State employees if the employee requests a defense and if the acts complained of in the civil action are actions or omissions that occurred during the course and scope of employment. Before the State can provide a defense, the employee must request representation and a determination whether

the North Carolina Department of Justice will represent the State employee/defendant must be made.

11. Rather than file a motion for extension of time to answer on behalf of the Non-Waiving Defendants pursuant to Rule 6(b)(1)(B)(allowing motions for extension of time after the deadline), the undersigned completed the representation investigation and recommended that the North Carolina Department of Justice (“DOJ”) represent all of the defendants. Subsequently, representation of all of the defendants was approved by the appropriate authority and letters were sent to the defendants confirming representation.
12. After DOJ’s representation of all defendants had been approved and the letters confirming representation had been sent, the undersigned filed the answer on behalf of all of the defendants, including Defendants Candelario, Holmes and Murray, on August 29, 2021. [D.E. 31]
13. Pursuant to Rule 10(c) of the Federal Rules of Civil Procedure, Defendants incorporate their response to the motion for entry of default filed previously herein. [D.E. 37]

WHEREFORE, having responded to the Court’s order dated September 20, 2021 [D.E. 39], and having filed their response to Plaintiff’s motions for entry of default [D.E. 37], Defendants respectfully request that the Court deny Plaintiff’s motions for entry of default and for such and other further relief as the Court deems just and proper.

Respectfully submitted, October 4, 2021.

JOSHUA H. STEIN
ATTORNEY GENERAL

/s/ Alan McInnes

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CERTIFICATE OF SERVICE

I hereby certify that, on this day, I electronically filed the **RESPONSE TO COURT ORDER DATED SEPTEMBER 20, 2021 [D.E. 39]** with the Clerk of the Court utilizing the CM/ECF system, and I further hereby certify that I cause to be mailed said document to the following non-CM/ECF participant, first-class United States Mail, postage prepaid, addressed as follows:

Stanley Earl Corbett, Jr.
OPUS No. 0716025
Central Prison
1300 Western Boulevard
Raleigh, NC 27606

Dated: October 4, 2021.

/s/ Alan D. McInnes

Alan D. McInnes
Assistant Attorney General